Filed 8/5/19 P. v. Oronia-Carrillo CA5

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIFTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

ENRIQUE ORONIA-CARRILLO,

Defendant and Appellant.

F076116

(Super. Ct. Nos. F14903114, F16903863, F16907669)

OPINION

THE COURT[*]

APPEAL from a judgment of the Superior Court of Fresno County. Gary D. Hoff, Judge.

Athena Shudde, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Louis M. Vasquez, Lewis A. Martinez, and Amanda D. Cary, Deputy Attorneys General, for Plaintiff and Respondent.

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[*] Before Hill, P.J., Detjen, J. and Franson, J.

By information, defendant Enrique Oronia-Carrillo was charged with kidnapping (Pen. Code,[1] § 207, subd. (a)); willful infliction of corporal injury to a former spouse or cohabitant with a qualifying prior conviction (§ 273.5, subd. (f)(1)); assault with a deadly weapon (§ 245, subd. (a)(1)); false imprisonment effected by violence (§ 236); carjacking (§ 215, subd. (a)); and contempt of court (§ 166, subd. (c)(1)). Following a trial, the jury found defendant guilty of contempt of court but could not reach a verdict on the remaining counts; as to these counts, the trial court declared a mistrial.

Thereafter, by amended information, defendant was charged with kidnapping (§ 207, subd. (a) [count 1]); two counts of willful infliction of corporal injury to a former spouse or cohabitant with a qualifying prior conviction (§ 273.5, subd. (f)(1) [counts 2 & 3]); and false imprisonment effected by violence (§ 236 [count 4]).[2] The amended information further alleged: as to counts 1 and 3, defendant personally inflicted great bodily injury under circumstances involving domestic violence (§ 12022.7, subd. (e)); and, as to count 4, he personally used a deadly and dangerous weapon (§ 12022, subd. (b)(1)). Following retrial, the jury found defendant guilty of the lesser included offense of false imprisonment effected by violence on count 1, guilty as charged on count 4, and not guilty on counts 2 and 3. In connection with count 1, the jury found "proved" the great bodily injury allegation. In connection with count 4, it found "not proved" the weapon allegation.

Defendant was sentenced to seven years: an upper term of three years on count 1 plus four years for infliction of great bodily injury. Execution of punishment on count 4 was stayed pursuant to section 654. Regarding the contempt-of-court conviction, the trial court credited defendant for time served. In two trailing probation violation cases, the

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[1] Subsequent statutory citations refer to the Penal Code.

[2] A charge of contempt of court (§ 166, subd. (c)(1) [count 5]) was included in the amended information but was not submitted to the retrial jury.

court revoked probation and imposed an additional aggregate term of two years four months.

On appeal, defendant contends: (1) the trial court should have stayed execution of punishment for the contempt-of-court conviction pursuant to section 654; and (2) the false imprisonment conviction on count 4 should be reversed because "it is duplicative of count 1." (Capitalization omitted.) We conclude substantial evidence supported separate punishment for the contempt-of-court conviction. We also accept the Attorney General's concession that the false imprisonment conviction on count 4 should be reversed.

STATEMENT OF FACTS

Prior to June 2016, defendant and A.Q. were in a relationship and cohabited for over a year. The pair broke up after defendant struck A.Q.

On December 23, 2016, A.Q. was next to her car in her residential parking lot when defendant pulled up in a pickup truck. He asked her to "help him go and pick up another car that . . . had [been] stranded somewhere." A.Q. refused, entered her vehicle, and drove away. Defendant tailed her for five minutes. He then passed A.Q., parked, and "got out to signal [her] to stop." A.Q. acquiesced and lowered the passenger side window approximately eight inches. Defendant "continued to insist that [A.Q.] go help him move the car." When she refused once again, he "put his hand in through the window," opened the passenger side door, and entered the car. A.Q. attempted to call the police, but defendant "threw himself on [her]," dislodging the phone. He "threatened [her]" and ordered her to "get out of the road and go into the fields." A.Q., who "was scared," drove into a garlic field. Halfway through the field, at defendant's behest, she stopped the car to switch seats with him. The two "crossed over" each other without exiting the interior cabin. As defendant started to drive, A.Q. opened the passenger side door and tried to flee. While he was pulling on A.Q.'s clothing to prevent the escape, defendant collided into several orange trees. The crash caused the ajar door to smash

A.Q.'s foot, fracturing two toes. Defendant stopped the car, called A.Q. a "bitch," and elbowed her right eyebrow, resulting in a laceration.

Afterward, defendant tied A.Q.'s hands together with rope and resumed driving. When they arrived at an almond field, he forced her into the backseat "[s]o that nobody would see [her] in case there were workers . . . ." Eventually, defendant "went into the trees," parked, and untied A.Q.'s hands. Per defendant's instruction and without exiting the interior cabin, A.Q. returned to the front passenger seat, where he "scold[ed] [her]" for "report[ing] him to the police . . . ." She replied "[she] had him locked up because he had beat [her] . . . ." Defendant told A.Q. he "would kill himself" if she did not go back to him. A.Q. "was scared" and "crying." Defendant and A.Q. remained inside the vehicle at the almond field for approximately three hours, during which defendant alternately cried, "promis[ed] [A.Q.] things if [she] [went] back [to] him," and chided her for crying. At one point, he gave her a towel to wipe blood off her face. Defendant brought A.Q. back to where he first entered her car. As soon as defendant exited the car and left in his truck, A.Q. drove to the police department and reported the incident.

At retrial, the parties stipulated defendant was convicted, on May 16, 2014, of willful infliction of corporal injury to his former spouse (§ 273.5, subd. (a)); was convicted on September 14, 2016, of two counts of willful infliction of corporal injury to A.Q. with a qualifying prior conviction (§ 273.5, subd. (f)(1)); and, on October 12, 2016, was served a criminal protective order which prohibited any contact with A.Q.

DISCUSSION

I. Substantial evidence supported separate punishment for the contempt-of-court conviction.

a. *Background*

At the sentencing hearing, the prosecutor asked the court to impose a concurrent term on defendant's contempt-of-court conviction. The court pronounced:

> "Yes. In the original Information as well as the . . . amended Information there was the charge of contempt of court that had been found true previously under [section] 166[, subdivision](c)(1), a misdemeanor, the court is giving him credit for time served on that matter."

b. *Analysis*

Defendant contends the court erroneously failed to stay execution of punishment on his contempt-of-court conviction pursuant to section 654. We disagree.

"An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision." (§ 654, subd. (a).) Moreover, "because [section 654] is intended to ensure that defendant is punished 'commensurate with his culpability' [citation], its protection has been extended to cases in which there are several offenses committed during 'a course of conduct deemed to be indivisible in time.' [Citation.]" (*People v. Harrison* (1989) 48 Cal.3d 321, 335 (*Harrison*).)

"It is defendant's intent and objective, not the temporal proximity of his offenses, which determine whether the transaction is indivisible." (*Harrison, supra,* 48 Cal.3d at p. 335.) "[I]f all of the offenses were merely incidental to, or were the means of accomplishing or facilitating one objective, defendant may be found to have harbored a single intent and therefore may be punished only once." (*Ibid.*) "If, on the other hand, defendant harbored 'multiple criminal objectives,' which were independent of and not merely incidental to each other, he may be punished for each statutory violation committed in pursuit of each objective, 'even though the violations shared common acts or were parts of an otherwise indivisible course of conduct.' [Citation.]" (*Ibid.*)

"The question whether section 654 is factually applicable to a given series of offenses is for the trial court, and the law gives the trial court broad latitude in making this determination. Its findings on this question must be upheld on appeal if there is any substantial evidence to support them." (*People v. Hutchins* (2001) 90 Cal.App.4th 1308,

1312; see *People v. Blake* (1998) 68 Cal.App.4th 509, 512 ["A trial court's implied finding that a defendant harbored a separate intent and objective for each offense will be upheld on appeal if it is supported by substantial evidence."].) " 'We must "view the evidence in a light most favorable to the respondent and presume in support of the [sentencing] order the existence of every fact the trier could reasonably deduce from the evidence. [Citation.]" [Citation.]' [Citation.]" (*People v. Hutchins, supra,* at pp. 1312-1313.)

The record shows defendant was served a criminal protective order on October 12, 2016. The order expressly prohibited any contact with A.Q. Nevertheless, on December 23, 2016, he violated the order when he drove to A.Q.'s residential parking lot and asked her to help him retrieve another vehicle. (See § 166, subd. (c)(1) ["[A] willful and knowing violation of a protective order or stay-away court order . . . shall constitute contempt of court, a misdemeanor . . . ."]; see also § 7, subds. (1), (5) ["The word 'willfully,' when applied to the intent with which an act is done or omitted, implies simply a purpose or willingness to commit the act . . . . It does not require any intent to violate law, or to injure another, or to acquire any advantage. [¶] . . . [¶] . . . The word 'knowingly' imports only a knowledge that the facts exist which bring the act or omission within the provisions of th[e] [Penal] code. It does not require any knowledge of the unlawfulness of such act or omission."].) After A.Q. refused his plea for assistance, she left the scene without incident. Defendant made no attempt to compel A.Q. to stay. (See *People v. Bamba* (1997) 58 Cal.App.4th 1113, 1123 ["[T]he essential element of false imprisonment is restraint of the person."].)

The court could reasonably deduce defendant's violation of the protective order was not "merely incidental to, or . . . the means of accomplishing or facilitating" A.Q.'s confinement (*Harrison, supra,* 48 Cal.3d at p. 335) and instead furthered an independent objective, e.g., obtaining his ex-girlfriend's assistance. (Cf. *In re Calvin S.* (2016) 5 Cal.App.5th 522, 533 [the defendant struck the victim in the head with a firearm to

prevent her from fleeing or resisting while he committed a sexual act on her; the appellate court concluded the two offenses—assault with a firearm and assault with intent to commit a sexual offense—facilitated the defendant's single objective of committing a sexual act on the victim].) Substantial evidence supported separate punishment for defendant's contempt-of-court conviction.[3]

II. The judgment of conviction on count 4 should be reversed

Next, defendant contends "count 4 must be reversed and dismissed because felony false imprisonment is a continuing offense duplicative of the felony false imprisonment in count 1." The Attorney General agrees count 4 "should be reversed" "[b]ecause the evidence in this case is insufficient to support a finding that [defendant]'s conduct constitute two separate acts of false imprisonment." We accept the Attorney General's concession.

DISPOSITION

The judgment of conviction on count 4 is reversed. The trial court is directed to amend the abstract of judgment accordingly and to transmit certified copies thereof to the appropriate authorities and to correct the August 8, 2017 minute order, which provides defendant is to "[s]erve **180 Days** at **Fresno County Jail** as to count(s) **006** [*sic*]," to correspond with the trial court's oral pronouncement crediting defendant for time served as to the contempt-of-court conviction. In all other respects, the judgment is affirmed.

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[3] In view of our determination, we need not address the Attorney General's alternative contentions (§ 654 is satisfied when a sentence is imposed on a felony offense and credit for time served is granted on a misdemeanor charge; even if § 654 required a stay, the time has been served, so the issue is moot).